

General Correspondence



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

22 AUG 2005

REPLY TO
ATTENTION OF

Planning Division
Environmental Branch

Mr. James J. Slack
Field Supervisor
U S Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960-3559

Dear Mr. Slack:

The U.S. Army Corps of Engineers, (Corps) Jacksonville District, is preparing a draft Supplemental Environmental Impact Statement (DEIS) for the Lake Okeechobee Regulation Schedule Study (LORSS) of the Central and Southern Florida (C&SF) Project, Lake Okeechobee, Florida. The DEIS will supplement the Final Environmental Impact Statement for the LORSS prepared in 2000.

Lake Okeechobee is located in south-central Florida, about 60 miles south of Orlando, and 40 miles northwest of Miami, within Okeechobee, Glades, Palm Beach, Martin, and Hendry Counties.

Pursuant to the Endangered Species Act, as amended, the Corps is requesting a list of any species or their critical habitat, either listed or proposed for listing, that may be present in the referenced study area (see enclosed map of LORSS area).

The Corps intends to reinstitute consultation as appropriate when we have identified alternatives and potential impacts. For further information please contact Mr. Nelson Colón at 904-232-2442 or by electronic mail at Nelson.R.Colon@saj02.usace.army.mil.

Sincerely,


Stuart J. Appelbaum
Chief, Planning Division

Enclosure



United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960



September 30, 2005

Stuart J. Appelbaum
Chief, Planning Division
U.S. Army Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32232-0019

Service Log Number: 4-1-05-CERP-10268
Project: Lake Okeechobee
Regulation Schedule

Dear Mr. Appelbaum:

Thank you for your letter dated August 29, 2005, in which you requested that the Fish and Wildlife Service (Service) provide a list of threatened and endangered species that may be present in the study area of the project referenced above.

PROJECT DESCRIPTION

Lake Okeechobee is located in south-central Florida, about 60 miles south of Orlando, and 40 miles northwest of Miami, within Okeechobee, Glades, Palm Beach, Martin and Hendry counties. The Lake Okeechobee Regulation Schedule Study (LORSS) was begun in 1995 with the intent to analyze and select a suitable schedule for regulating water levels within the lake. This study also takes into account the timing and quantity of water releases to downstream systems such as the St. Lucie and Caloosahatchee estuaries, and the remnant Everglades to the south in the Water Conservation Areas. An Environmental Impact Statement (EIS) was published in 2000, and the WSE (Water Supply and Environment) regulation schedule was selected for implementation. Since implementation of the WSE, there have been many temporary deviations to the schedule and minor modifications made to it to fine-tune its responsiveness to severe or unanticipated climatologic changes. The U.S. Army Corps of Engineers is currently preparing a Draft Supplemental EIS to again evaluate possible alternatives to the existing regulation schedule.

THREATENED AND ENDANGERED SPECIES

The Service has reviewed our Geographic Information System (GIS) database for recorded locations of federally listed threatened and endangered species within or near the project area. The GIS database is a compilation of data received from several sources. The Service has not conducted a site inspection to verify species occurrence or validate the GIS results. However,



we assume that listed species occur in suitable ecological communities and recommend site surveys to determine the presence or absence of listed species. Ecological communities suitable for listed species can be found in the species accounts in the *South Florida Multi-Species Recovery Plan*. This document is available on the internet at <http://www.fws.gov/verobeach/Programs/Recovery/esvbrecovery.html>.

We have also provided for your consideration two additional internet links:

(1) <http://www.fws.gov/verobeach/Programs/Permits/Section7.html>. This page provides links to tables of species by county that are protected as either threatened or endangered under the Endangered Species Act of 1973, as amended (ESA) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*) for counties in south Florida. Because this matrix does not include State-listed species, we recommend that you contact the Florida Fish and Wildlife Conservation Commission (FWC) to identify those species potentially present in the vicinity of the project; and

(2) <http://migratorybirds.fws.gov/>. This list represents species that the Service is required to protect and conserve under other authorities, such as the Fish and Wildlife Coordination Act of 1958, as amended (FWC) (48 Stat. 401; 16 U.S.C. 661 *et seq.*) and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 701 *et seq.*). A variety of habitats within the project area may provide resting, feeding, and nesting sites for a variety of migratory bird species. As a public trust resource, migratory birds must be taken into consideration during project planning and design.

Everglade snail kite

Suitable habitat for the Everglade snail kite (*Rostrhamus sociabilis plumbeus*) consists of freshwater marshes and shallow vegetated edges of lakes where apple snails (*Pomacea* spp.) are present. Critical habitat for the snail kite was designated in 1977, and includes a large portion of the littoral zone in the western and southwestern shores of Lake Okeechobee. Snail kite survey data over the past several years have shown an almost complete abandonment of Lake Okeechobee as a breeding area, when it historically was one of the most important breeding grounds for the snail kite in all of Florida. Water levels within the lake affect the vegetative composition and structure of the lake's littoral zone (habitat for the apple snail), and the availability of suitable snail kite nesting habitat.

Wood stork

Our records indicate the project occurs within the core foraging area (CFA) (within 18.6 miles) of several historic and current wood stork (*Mycteria americana*) nesting colonies. The wood stork typically utilizes freshwater marshes, ponds, ditches, tidal creeks and pools, impoundments, pine/cypress depressions, and swamp sloughs for foraging. They forage most effectively in shallow-water areas with highly concentrated prey, such as wetland depressions subject to seasonal drying.

Bald eagle

Our database indicates that there are numerous active and inactive bald eagle (*Haliaeetus leucocephalus*) nests located within and surrounding the project site. Bald eagles are vulnerable to disturbance during courtship and in the early stages of nesting, which may lead to nest abandonment or chilled or overheated eggs and young. Human activity near the nest later in the nesting cycle may cause premature fledging, thereby reducing the likelihood of fledgling survival. The Service and the FWC have agreed upon standard protection measures for bald eagles. The Service's *Habitat Management Guidelines for the Bald Eagle in the Southeast Region* (Service 1987) provides recommendations to avoid adversely affecting the bald eagle during the nesting season. These guidelines can be viewed or downloaded at: <http://northflorida.fws.gov/BaldEagles/Documents/eagle-habitat.pdf>.

West Indian manatee

Our records indicate that the endangered West Indian manatee (*Trichechus manatus*) occurs in the lake, its peripheral canals, and within the Caloosahatchee and St. Lucie rivers and their associated estuaries. Manatees feed on a variety of submergent, emergent, and floating vegetation; preferred areas for foraging include shallow seagrass beds (1 to 3 m [3 to 9 ft] in depth). Shallow water areas are also used for resting, mating, and calving. Coastal shorelines and deeper inland channels are often used as travel and migratory routes. Manatees may be impacted by changes to their food supply, and by changes in the operation of water control structures. One of the principal threats to manatees is the risk of mortality or injury due to impact with watercraft. Boat traffic is present throughout Lake Okeechobee, with larger boats typically using the Okeechobee Waterway.

Cape Sable seaside sparrow

Cape Sable seaside sparrows have a very restricted range, occurring only in the southern Everglades of Miami-Dade and Monroe counties in South Florida. They are non-migratory birds and are isolated from other breeding populations of seaside sparrows. Presently, the known distribution of the sparrow is restricted to two areas of marl prairies east and west of Shark River Slough, and flanking Taylor Slough, in Everglades National Park. This area is indirectly affected by water releases from Lake Okeechobee south into the Water Conservation Areas and yet farther south into Everglades National Park.

Eastern indigo snake

The eastern indigo snake (*Drymarchon corais couperi*) was federally listed as threatened in 1978 due to dramatic population declines. Since then, habitat lost to residential and commercial development has become a significant threat. In south Florida, eastern indigo snakes are frequently associated with most types of native habitat, including uplands, wetlands, agricultural and disturbed lands (Service 1999). Suitable indigo snake habitat exists within the project site on the surrounding levees and in the seasonal wetlands within the lake's littoral zone. We

recommend that the applicant adhere to the *Standard Protection Measures for the Eastern Indigo Snake* (Service 2002) in any proposed project design.

Okeechobee gourd

The Okeechobee gourd (*Cucurbita okeechobeensis* ssp. *okeechobeensis*) is a vine that was historically common south of Lake Okeechobee. It is now restricted in the wild to two small disjunct populations, one of which is on natural and man-made spoil islands within, and along the shoreline of Lake Okeechobee in South Florida. Currently, the survival of the Okeechobee gourd in south Florida is threatened by the water-regulation practices in Lake Okeechobee and the continued expansion of exotic vegetation in the lake.

Sea turtles

The Service believes that free-swimming sea turtles may be affected by the alteration of natural salinity cycles in the Caloosahatchee and St. Lucie estuaries. The quantity and quality of fresh water entering the estuaries are influenced by the Lake Okeechobee regulation schedule. Free-swimming sea turtles are under the jurisdiction of the National Marine Fisheries Service (NOAA Fisheries). To obtain concurrence with your determination regarding effects to free-swimming sea turtles, the Service recommends that you coordinate with the NOAA Fisheries Miami Office at 305-595-8352.

Johnson's seagrass

The Service believes that Johnson's seagrass (*Halophila johnsonii*) may be affected by the alteration of natural salinity cycles in the Caloosahatchee and St. Lucie estuaries. The quantity and quality of fresh water entering the estuaries are influenced by the Lake Okeechobee regulation schedule. Johnson's seagrass is under the jurisdiction of the National Marine Fisheries Service (NOAA Fisheries). To obtain concurrence with your determination regarding effects to this species, the Service recommends that you coordinate with the NOAA Fisheries Miami Office at 305-595-8352.

Thank you for the opportunity to comment and for your cooperation in protecting federally listed species. If you have any questions, please contact Doug Chaltry at 772-562-3909, extension 320, or Robert Pace at extension 239.

Sincerely yours,



James J. Slack ^{Foy}
Field Supervisor
South Florida Ecological Services Office

cc:

District, West Palm Beach, Florida (Dr. Susan Gray)
FWC, Vero Beach, Florida (Dr. Joseph Walsh)
Audubon of Florida, Lorida, Florida (Dr. Paul Grey)
Service, Jacksonville, Florida (Miles Meyer)

LITERATURE CITED

- U.S. Fish and Wildlife Service (Service). 1987. *Habitat Management Guidelines for the Bald Eagle in the Southeast Region*. Fish and Wildlife Service, Region 4, Atlanta, Georgia.
- U.S. Fish and Wildlife Service (Service). 1999. *South Florida Multi-Species Recovery Plan*. Atlanta, Georgia.
- U.S. Fish and Wildlife Service (Service). 2002. *Draft Standard Protection Measures for the Eastern Indigo Snake*. Fish and Wildlife Service, South Florida Ecological Services Office; Vero Beach, Florida.



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Planning Division
Environmental Branch

MAR 08 2006

Mr. Jay Slack
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960-3559

Dear Mr. Slack:

This letter is in reference to the Lake Okeechobee Regulation Schedule (LORS) study that is currently underway. As you are aware, the study is being conducted to evaluate possible alternatives to the existing Water Supply and Environment (WSE) regulation schedule for Lake Okeechobee, and the U.S. Fish and Wildlife Service (Service) has a representative working with the U.S. Army Corps of Engineers (Corps) on the Project Delivery Team. Because several listed species could be affected by a new regulation schedule, the Corps would like to engage in informal consultation pursuant to the Endangered Species Act (ESA) during the new schedule study to involve the Service in the development and evaluation of alternatives, instead of waiting to consult on a preferred alternative.

The current WSE schedule was adopted in 2000. It was developed to optimize environmental benefits with little or no impact to the competing purposes of flood control, water supply, navigation, salinity control and recreational purposes. The Corps consulted informally with the Service on WSE for several years, and in 1999, based upon the best scientific information available, the Service concurred with the Corps' determination that the regulation schedule was not likely to adversely affect federally listed threatened or endangered species or result in adverse modification of designated critical habitat. The Service recognized that WSE was likely to slightly benefit the lake's littoral zone, which was likely to have a slight positive effect on the snail kite, the wood stork, the bald eagle and the Okeechobee gourd. Prior to consultation on WSE, the Corps formally consulted on its previous schedule in 1978, and subsequently coordinated with the Service on interim schedule Run 25 which preceded WSE.

The Corps has implemented several temporary deviations to the WSE regulation schedule since its adoption. The purposes of the deviations include preventing additional adverse impacts to Lake Okeechobee, minimizing the risk of high lake levels, and reducing the potential for steady releases to the Caloosahatchee and St. Lucie Estuaries, while balancing other management objectives such as flood control and water supply. The Corps implemented a temporary planned deviation allowing for up to Level 1 pulse releases when not specifically called for by WSE from December 12, 2003 through the end of May 2004. The deviation was closely coordinated with the Service to insure it would not adversely impact any threatened or endangered species or critical habitat. This deviation was subsequently extended through May 2005. For the deviation and the extension, the Service concurred with the Corps' determinations that the actions were not

likely to adversely affect threatened or endangered species or result in destruction or adverse modification of designated critical habitat. In January 2005, the Corps implemented another temporary planned deviation known as the Class Limit Adjustment (CLA) which decreased the time that the decision tree in the regulation schedule called for no discharges from Lake Okeechobee and allowed for more frequent smaller releases. The Service recognized that changes would be beneficial to the overall system and recommended implementation of the CLA. The Service also recognized that consultation would occur as the Corps planned a new regulation schedule. In February 2006, the Corps obtained approval for a temporary planned deviation similar to the one approved in 2003. This, too, was coordinated with the Service, and again, the Service concurred with the Corps' determinations that the deviation was not likely to adversely affect threatened or endangered species or result in destruction or adverse modification of designated critical habitat. And again, the Service recognized the Corps would be seeking consultation on a new regulation schedule.

The main thrust of WSE was optimization of environmental benefits. Since 2000, temporary planned deviations have been adopted to allow for greater discharges from the Lake in an effort to, among other things, minimize adverse effects of recent high lake levels. The Corps is not aware of new information that reveals effects of WSE that may affect listed species or critical habitat in a manner or to an extent not previously considered. Lake Okeechobee sustained high water levels in 2003, 2004, and 2005 which have contributed to a decline in emergent and submerged vegetation, but these high lake levels are attributable to above normal rainfall and unusually active hurricane seasons and are not the result of the implementation of WSE. In light of the coordination which has occurred regularly between the Corps and the Service on WSE and the minor improvements that followed, the Corps concludes that its current operation under WSE, with approved deviations, is in compliance with the ESA, and therefore, no consultation is warranted at this time for current operations. The Corps does not anticipate any change in operations pending the adoption of a new schedule. The Corps is aware that declines in snail kite populations have been observed statewide, and we will continue to work with the Service to better understand the habitat needs of the snail kite and other listed species that could be affected by Lake Okeechobee operations.

While the Corps has implemented the deviations with the intent to lower above-average lake levels and improve the ecological conditions within Lake Okeechobee's littoral zone, the deviations have not produced significant environmental benefits. Through the LORS study, the Corps will plan measures to further improve the environmental performance of the regulation schedule. The study will also consider South Florida Water Management District's plans to install temporary pumps to provide for agricultural water supply from Lake Okeechobee when lake levels are low.

As part of the Corps' scoping process for the LORS study, a July 21, 2005, letter was sent to the Service and other interested parties describing the study and requesting views, comments, and information regarding the LORS. Your office provided early comments by letter dated

September 19, 2005 and offered to contribute staff and expertise to the study effort. Additionally, by letter dated August 29, 2005, the Corps requested that the Service provide a list of threatened and endangered species that may be present in the study area. Your office replied with a species list by letter dated September 30, 2005.

The Corps recognizes the value of input from the Service to the study team in formulating alternatives to be modeled and assessing their performance. While the Corps considers this to be ongoing informal consultation, we would like to officially request informal consultation concerning a new regulation schedule, pursuant to 50 CFR Section 402.12, on the Everglade snail kite and other listed endangered and threatened species at this early stage to identify measures to avoid adverse effects

As you are aware, the Corps anticipates preparation of a Biological Assessment upon identification of a recommended plan. Based on the information in the Biological Assessment, a determination will be made as to whether the recommended plan may affect listed species, and formal consultation will be initiated pursuant to 50 CFR Section 401.14 as appropriate. The Corps is working expeditiously on the LORS study. We anticipate selecting a recommended plan in May 2006, with completion of a draft Supplemental Environmental Impact Statement in July 2006. We are working with an expedited schedule, as we know the importance and urgency in modifying the regulation schedule.

The Corps appreciates your contribution of expertise to the LORS Project Delivery Team. We look forward to working with you on this very important and timely project. Should you have any questions, please contact Ms. Yvonne Haberer at 904-232-1701.

Sincerely,

A handwritten signature in black ink, reading "Marie G. Burns". The signature is written in a cursive, flowing style.

Marie G. Burns
Chief, Environmental Branch

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard
Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/ES

MAY 16 2006

Colonel Robert M. Carpenter
District Engineer
U.S. Army Corps of Engineers
701 San Marco Boulevard, Room 372
Jacksonville, Florida 32207-8175

RECEIVED

MAY 22 2006

JACKSONVILLE DISTRICT
USACE

Dear Colonel Carpenter:

The Fish and Wildlife Service has been an active participant in the effort to formulate a revision to the current Water Supply and Environment Regulation Schedule for Lake Okeechobee. The Lake Okeechobee Regulation Schedule Study (LORSS) is at the point of selection of an alternative, and that new schedule is expected to be in effect in the years 2007 through 2010.

The multi-agency LORSS team has reviewed the performance of simulations of several alternatives, using output of the South Florida Water Management Model. The Service continues to take a broad perspective in balancing competing interests in regulation of Lake Okeechobee. Nevertheless, in view of the significant ecological damage to the Caloosahatchee River estuary, San Carlos Bay, and J.N. "Ding" Darling National Wildlife Refuge; we are compelled to ensure that the selected plan is not predicted to cause any additional damage to the Caloosahatchee estuary than the "future-without-project" condition.

The Service recommends that the Corps of Engineers (Corps) adopt Alternative 1aS2 as the selected alternative in the Supplemental Environmental Impact Statement for this proposed action. This is based on our analysis of model predictions that it is the only alternative under consideration that will not harm any of the freshwater and estuarine ecosystems of south Florida that are linked to Lake Okeechobee. Additionally, while Alternative 1aS2 will provide some reduction in the high water stages that are damaging the littoral zone of Lake Okeechobee, it does so without additional high freshwater flows that are damaging the Caloosahatchee and St. Lucie estuaries.

The Service will issue a Fish and Wildlife Coordination Act report soon after the Corps selects a preferred alternative and are awaiting your biological assessment to complete our Endangered Species Act requirements. We have stated in previous correspondence that we believe formal consultation will be necessary, with emphasis on addressing incidental take of the endangered Everglade snail kite (*Rostrhamus sociabilis plumbeus*). We look forward to continuing to assist

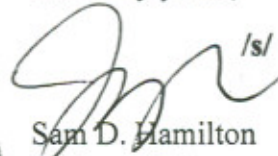
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Colonel Carpenter

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the Corps in reviewing the potential environmental impacts of the LORSS. If you have any questions or need additional information, please contact Robert Pace at 772/562-3909 (ext. 239).

Sincerely yours,



/s/ Jackie Parrish

Acting

Sam D. Hamilton
Regional Director



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

JUN 30 2006

REPLY TO
ATTENTION OF

Planning Division
Environmental Branch

Mr. Paul Souza
Acting Field Supervisor
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960-3559

Dear Mr. Souza:

This letter is in reference to the Lake Okeechobee Regulation Schedule (LORS), Lake Okeechobee, Florida. The U.S. Army Corps of Engineers (Corps) is proposing to implement a new water regulation schedule for Lake Okeechobee. The proposed water regulation schedule will replace the current schedule referred to as the Water Supply/Environment (WSE) regulation schedule.

Due to the importance and urgency in beginning formal consultation on the LORS, the Corps has based our determination of effects on listed species from the hydrologic performance of the proposed regulation schedule as simulated by the South Florida Water Management Model. The Corps is currently in the process of developing the Water Control/Operations Plan for the proposed regulation schedule. It is the Corps' opinion that the hydrologic performance provides an adequate indication for ecosystem benefits and impacts. Accordingly, hydrologic performance was the basis for our effect determinations. Hydrologic performance as reflected in the modeling is expected to be moderated by actual operations. The Corps will provide you with additional operational data as it becomes available. Your staff has been actively involved as Project Delivery Team members working on the LORS study. As such, results of the modeling have been shared with them.

In accordance with the provisions of Section 7 of the Endangered Species Act, as amended, the Corps is providing a Biological Assessment (BA) discussing the potential effects to endangered and threatened species. Based on the information presented in the BA, the Corps has made a "no effect" determination for the bald eagle (*Haliaeetus leucocephalus*), Eastern indigo snake (*Drymarchon corais couperi*), West Indian manatee (*Trichechus manatus*) and the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*).

As discussed in the BA, the Corps has determined that the proposed action may affect the Everglade snail kite (*Rostrhamus sociabilis plumbeus*), wood stork (*Mycteria Americana*) and Okeechobee gourd (*Cucurbita okeechobeensis*), and we are requesting a Biological Opinion be issued for these species.

-2-

If you have any questions, or require additional information, please contact Ms. Yvonne Haberer at 904-232-1701.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marie G. Burns".

Marie G. Burns
Chief, Environmental Branch

Enclosure



United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960



July 21, 2006

RECEIVED
28 July 2006

Stuart J. Appelbaum
Planning Division
U.S. Army Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32232-0019

Attention: Yvonne Haberer

Service Section 7 Code: 441420-2006-0072
Date Received: July 3, 2006
Project: Lake Okeechobee
Regulation Schedule

Dear Mr. Appelbaum:

This letter acknowledges the Fish and Wildlife Service's (Service) receipt of your June 30, 2006, letter requesting initiation of formal consultation under the provisions of section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*) The consultation concerns the possible effects of the proposed revision to the Water Supply and Environmental regulation schedule for Lake Okeechobee on the Everglade snail kite (*Rostrhamus sociabilis plumbeus*), wood stork (*Mycteria americana*), West Indian manatee (*Trichechus manatus*), bald eagle (*Haliaeetus leucocephalus*), eastern indigo snake (*Drymarchon corais couperi*), Okeechobee gourd (*Cucurbita okeechobeensis*), and Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*).

All the information required to initiate consultation was either included with your letter or is otherwise accessible for our consideration and reference. In future correspondence on this consultation, please refer to the assigned Service Section 7 Code 41420-2006-0072.

The Service has been coordinating with the U.S. Army Corps of Engineers (Corps) on this proposal since early in the project planning phase. Based on our knowledge of the project and our preliminary analysis of the modeling results available on-line, we concur with the Corps' determination that the proposed project will have "no effect" on the bald eagle, eastern indigo snake, West Indian manatee, and the Cape Sable seaside sparrow, or result in destruction or adverse modification of designated critical habitat for the manatee. We also concur that the project "may affect" the Everglade snail kite, wood stork, and Okeechobee gourd, and we will include these three species in the biological opinion produced from this consultation. Our early

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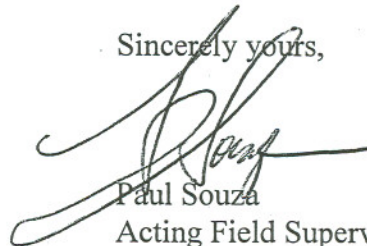
analysis indicates that your assertion of net positive effects for the wood stork and the gourd are possibly correct. However, at this time we cannot agree that the project will have a beneficial effect on the Everglade snail kite. Our complete analysis of the effects of this project on the snail kite and its critical habitat will be included in the biological opinion. This concurrence applies to those federally listed species under the jurisdiction of the Service; a separate concurrence will be required for species under the jurisdiction of the National Marine Fisheries Service.

Section 7 allows the Service up to 135 days to prepare our biological opinion (unless we mutually agree to an extension). Therefore, we expect to provide you with our biological opinion no later than November 15, 2006.

As a reminder, the Act requires that after initiation of formal consultation, the Corps may not make any irreversible or irretrievable commitment of resources that limits future options. This practice ensures that agency actions do not preclude the formulation or implementation of reasonable and prudent alternatives that avoid jeopardizing the continued existence of threatened or endangered species or destroying or modifying their critical habitats.

Thank you for your cooperation in protecting the fish and wildlife resources of south Florida. If you have additional questions about this consultation or the consultation process in general, please call Doug Chaltry at 772-562-3909, extension 320, or Robert Pace at extension 239.

Sincerely yours,



Paul Souza

Acting Field Supervisor

South Florida Ecological Services Office

cc:

District, West Palm Beach, Florida (Susan Gray)

FWC, Tallahassee, Florida (Mary Ann Poole)

FWC, Okeechobee, Florida (Don Fox)

DOI, Miami, Florida (Terrence Salt)

Service, Jacksonville, Florida (Miles Meyer)

Service, Atlanta, Georgia (Dave Horning)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701

September 16, 2005

Ms. Marie Burns
Planning Division, Environmental Branch
Jacksonville District
Department of the Army, Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32232-0019

Dear Ms. Burns:

The National Marine Fisheries Service (NMFS) has reviewed the Notice of Intent to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Lake Okeechobee Regulation Schedule Study (LORSS) of the Central and Southern Florida Project. The DSEIS will supplement the Final Environmental Impact Statement for the LORSS that was prepared in 2000. The area of interest includes Lake Okeechobee, a large watershed north of the lake, and several downstream estuaries (St. Lucie Estuary, Caloosahatchee Estuary, the Everglades Protection Area, and the Lake Worth Lagoon). The purpose of the study is to examine alternative modifications to the lake's current regulation schedule. The study will consider operational changes to the water management structures that discharge water from the lake as well as criteria used to determine those operations. The study also will consider municipal, agricultural, and industrial water supply, continued flood protection, protection of the lake's environmental resources and its downstream estuaries, water quality, fish and wildlife habitat, endangered and threatened species, and other issues identified during the scoping process.

Lake Okeechobee is hydrologically connected to downstream estuarine waters that support NMFS' trust resources. Therefore, we recommend that the DSEIS include an evaluation of potential impacts to essential fish habitat (EFH), including, but not limited to estuarine waters, mangroves, seagrasses, and live bottom communities. The evaluation may include anticipated benefits to these resources as well as any potential detrimental impacts the project may have on these resources. If significant detrimental impacts are anticipated, then mitigation would be needed.

If the proposed action might adversely impact EFH or other living marine resources, those impacts and any related mitigation should be fully described in the environmental impact statement for the project. Requirements concerning EFH coordination and management are contained in the Magnuson-Stevens Fishery Conservation and Management Act, as amended by

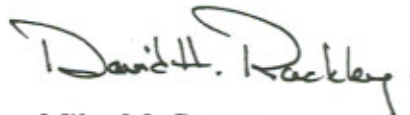


the Sustainable Fisheries Act of 1996 (P.L. 104-267). The regulations for implementing coordination are found at 50 CFR 600.920. EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." If there are foreseeable direct and/or indirect impacts to EFH associated with the proposed project, an EFH assessment should be prepared. The EFH assessment must include 1) a description of the proposed action; 2) an analysis of anticipated direct, indirect, and cumulative impacts of the proposed action on EFH, Federally managed species, and associated species by life history state; and 3) the federal agency's views regarding the effects of the proposed project on EFH.

We appreciate the opportunity to provide these comments. Related correspondence should be addressed to the attention of Audra Livergood at our Miami Office. She may be reached at 11420 North Kendall Drive, Suite #103, Miami, Florida 33176, or by telephone at (305) 595-8352.

Sincerely,

JZ



Miles M. Croom
Assistant Regional Administrator
Habitat Conservation Division

cc:

EPA, West Palm (Attn. Ron Miedema)
SFWMD, West Palm (Attn. Ron Peekstock)
F/SER4, Mark Sramek
F/SER47, Livergood



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

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SEP 13 2005

F/SER31: SN

Mr. Stuart Appelbaum
Chief, Planning Division
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, FL 32232-0019

Dear Mr. Appelbaum:

This correspondence responds to the Department of the Army's (Army) letter requesting comments on potential resource issues for the Lake Okeechobee Regulation Schedule Study (LORSS) and Central and Southern Florida (C&SF) Study. The Army is beginning preparation of a Draft Supplemental Environmental Impact Statement (DSEIS) for the LORSS and C&SF studies. The DSEIS will supplement the Final EIS for the LORSS prepared in 2000.

The LORSS and C&SF studies involve watersheds north of Lake Okeechobee and several downstream ecosystems (St. Lucie Estuary, Caloosahatchee Estuary, Everglades Protection Area, and Lake Worth Lagoon). The LORSS and C&SF studies involve developing flood control and water supply from Lake Okeechobee to areas downstream.

Johnson's seagrass (*Halophila johnsonii*) and its critical habitat are located along the east coast of Florida between Sebastian Inlet and Biscayne Bay. The smalltooth sawfish (*Pristis pectinata*) was listed as endangered on April 1, 2003. Mote Marine Laboratory's sightings data indicate the current distribution of smalltooth sawfish has contracted to peninsular Florida.

We recommend that the Army evaluate the potential impact that freshwater discharges may have on Johnson's seagrass, Johnson's seagrass critical habitat, and smalltooth sawfish.

We look forward to continued cooperation with the Army in conserving our endangered and threatened resources. If you have any questions regarding these comments, please contact



Ms. Shelley Norton, natural resource specialist, at (727) 824-5312, or by e-mail at shelley.norton@noaa.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Bernhart", with a long horizontal flourish extending to the right.

David Bernhart
Assistant Regional Administrator
for Protected Resources

File: 1514-22.f.1.FL
Ref: I/SER/2005/04702



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Planning Division
Environmental Branch

JAN 11 2006

Ms. Mary Ann Poole, Director
Office of Policy and Stakeholder Coordination
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600

Dear Ms. Poole:

This is in reference to the Lake Okeechobee Regulation Schedule Study (LORSS) of the Central and Southern Florida (C&SF) Project for Flood Control and other purposes, Lake Okeechobee, Florida. The study is being conducted to evaluate possible alternatives to the existing Water Supply and Environment (WSE) regulation schedule. For a description of the LORSS, please refer to the enclosed scoping letter dated July 21, 2005.

At this time, the U.S. Army Corps of Engineers (Corps) would like to invite your agency's participation on the Project Delivery Team. Input from the Florida Fish and Wildlife Conservation Commission would assist the study team in formulating alternatives to be modeled and assessing their performance. The Corps is working expeditiously on the LORSS, as we know the importance and urgency in modifying the regulation schedule. Our schedule for selecting a recommended plan is in early 2006, with completion of a draft Supplemental Environmental Impact Statement shortly thereafter.

The Project Delivery Team will be meeting on a weekly basis through teleconference or video conference. Mr. Pete Milam, study team Project Manager, will be coordinating the weekly meetings via electronic mail. Meeting coordination questions can be directed to Mr. Milam by telephone at 904-232-3432, or electronic mail at j.p.milam@usace.army.mil.

The Corps appreciates your contribution of expertise to the LORSS Project Delivery Team. We look forward to working with you on this very important and timely project. Should you have any questions, please contact Ms. Yvonne Haberer, Environmental Technical Lead for the LORSS, at 904-232-1701, or electronic mail at yvonne.l.haberer@usace.army.mil.

Sincerely,

Marie G. Burns
Chief, Environmental Branch

Enclosure

Copies Furnished:

Ms. Ann Forstchen, Fish and Wildlife Research Institute, 100 Eighth Avenue, SE, St. Petersburg,
Florida 33701

Mr. Donald Fox, Florida Fish and Wildlife Commission, Biological Field Station, Okeechobee,
Florida 34974

Division of Fisheries, 3991 SE 27th Ct.



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Planning Division
Environmental Branch

JAN 11 2006

Mr. David Bernhart
Assistant Regional Administrator, Protected Resources
National Marine Fisheries Service, Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701

Dear Mr. Bernhart:

This is in reference to the Lake Okeechobee Regulation Schedule Study (LORSS) of the Central and Southern Florida (C&SF) Project for Flood Control and other purposes, Lake Okeechobee, Florida. The study is being conducted to evaluate possible alternatives to the existing Water Supply and Environment (WSE) regulation schedule. For a description of the LORSS, please refer to the enclosed scoping letter dated July 21, 2005.

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Sincerely,

Marie G. Burns
Chief, Environmental Branch

Enclosure

Copy Furnished:

Ms. Shelley Norton, Natural Resource Specialist, National Marine Fisheries Service,
Southeast Regional Office, 263 13th Avenue South, St. Petersburg, Florida 33701



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Planning Division
Environmental Branch

JAN 11 2006

Mr. Miles M. Croom, Assistant Regional Administrator
Habitat Conservation Division
National Marine Fisheries Service, Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701

Dear Mr. Croom:

This is in reference to the Lake Okeechobee Regulation Schedule Study (LORSS) of the Central and Southern Florida (C&SF) Project for Flood Control and other purposes, Lake Okeechobee, Florida. The study is being conducted to evaluate possible alternatives to the existing Water Supply and Environment (WSE) regulation schedule. For a description of the LORSS, please refer to the enclosed scoping letter dated July 21, 2005.

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Sincerely,

Marie G. Burns
Chief, Environmental Branch

Enclosure

Copy Furnished:

Ms. Audra Livergood, National Marine Fisheries Service, 11420 North Kendall Drive, Suite #103,
Miami, Florida 33176



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Planning Division
Environmental Branch

JAN 11 2006

Mr. James J. Slack
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960-3559

Dear Mr. Slack:

This is in reference to the Lake Okeechobee Regulation Schedule Study (LORSS) of the Central and Southern Florida (C&SF) Project for Flood Control and other purposes, Lake Okeechobee, Florida. The study is being conducted to evaluate possible alternatives to the existing Water Supply and Environment (WSE) regulation schedule. For a description of the LORSS, please refer to the enclosed scoping letter dated July 21, 2005.

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Sincerely,

Marie G. Burns
Chief, Environmental Branch

Enclosure



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Planning Division
Environmental Branch

JAN 12 2006

Mr. Greg Knecht
Department of Environmental Protection
Water Quality and Special Projects Program
2600 Blair Stone Road-MS 3560
Tallahassee, Florida 32399-2400

Dear Mr. Knecht:

This is in reference to the Lake Okeechobee Regulation Schedule Study (LORSS) of the Central and Southern Florida (C&SF) Project for Flood Control and other purposes, Lake Okeechobee, Florida. The study is being conducted to evaluate possible alternatives to the existing Water Supply and Environment (WSE) regulation schedule. For a description of the LORSS, please refer to the enclosed scoping letter dated July 21, 2005.

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Sincerely,

Marie G. Burns
Chief, Environmental Branch

Enclosure



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Planning Division
Environmental Branch

JAN 12 2006

Ms. Kim Shugar
Department of Environmental Protection
Ecosystem Program Department
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Dear Ms Shugar:

This is in reference to the Lake Okeechobee Regulation Schedule Study (LORSS) of the Central and Southern Florida (C&SF) Project for Flood Control and other purposes, Lake Okeechobee, Florida. The study is being conducted to evaluate possible alternatives to the existing Water Supply and Environment (WSE) regulation schedule. For a description of the LORSS, please refer to the enclosed scoping letter dated July 21, 2005.

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Sincerely,

Marie G. Burns
Chief, Environmental Branch

Enclosure

Copy Furnished:

Mr. John Outland, Department of Environmental Protection, 3900 Commonwealth Boulevard,
Tallahassee, Florida 32399-3000.



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

April 28, 2006

The Honorable John Paul Woodley, Jr.
Principal Deputy Assistant Secretary of the Army
Civil Works
108 Army Pentagon, Room 3E446
Washington, DC 20310-0108

Dear Assistant Secretary Woodley:

Last night, I received a troubling report from the South Florida Water Management District about the integrity of the Herbert Hoover Dike. I am very concerned about a potential failure of the dike and the enormous impacts such a catastrophe could have on our state.

Hurricanes are a fact of life in Florida. Florida has experienced eight hurricanes – five of them major Category 3 or higher – during the last two years. As we approach the 2006 Hurricane Season, it is critical that the U.S. Army Corps of Engineers identify solutions to fortify the levee to protect the lives and property of thousands of Floridians in communities around Lake Okeechobee.

Please consider pursuing the following measures:

- Adopt a regulation schedule to keep Lake Okeechobee at lower levels through the hurricane season.
- Remove power poles from the toe of the dike.
- Begin daily inspections of the dike to ensure potential problems are identified early.
- Provide materials, equipment and personnel to make emergency repairs when vulnerabilities are identified.
- Accelerate repairs and rehabilitation currently underway.
- Reevaluate the design of the repairs to ensure they provide adequate protection.
- Develop engineering solutions to strengthen the dike against wave action, storm surges and seepage-related erosion.
- Request congressional authorization to improve the Herbert Hoover Dike to dam standards.
- Provide the best available data and evacuation support tools for hurricane threats to the State Division of Emergency Management.

The Honorable John Paul Woodley, Jr.
Page Two
April 28, 2006

I am committed to protecting the people in communities around Lake Okeechobee. My state emergency management team is briefing local officials on the status of the Herbert Hoover Dike next week. Our state team, working with county emergency management officials, will update evacuation plans to reflect this increased risk by the start of hurricane season.

A catastrophic failure of the dike will impact the lives and livelihoods of thousands of Floridians. It would be devastating to our economy, environment and quality of life. While preparing for the impacts of a dike failure is critical to prevent the loss of life, the priority should be preventing such a failure from ever occurring. For the long-term safety of residents and economic vitality of these communities, the Corps of Engineers must provide a permanent engineering solution to vulnerabilities of dike. I urge you to take immediate action to avert a potential disaster.

Thank you for your personal attention to this very important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeb Bush". The signature is fluid and cursive, with the first name "Jeb" and last name "Bush" clearly distinguishable.

Jeb Bush

cc: The Florida Delegation
South Florida Water Management District Governing Board
Craig Fugate, Director, Emergency Management
Secretary Colleen Castille, Department of Environmental Protection
The Honorable Clarence Anthony, Mayor, City of South Bay
The Honorable Steve B. Wilson, Mayor, City of Belle Glade
The Honorable J.P. Sasser, Mayor, City of Pahokee
The Honorable David McGee, Mayor, City of Moore Haven
The Honorable Randy Bengston, Mayor, City of LaBelle
The Honorable Mali Chamnes, Mayor, City of Clewiston
Palm Beach County Commission
Glades County Commission
Hendry County Commission



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108



MAY 03 2006

Honorable Jeb Bush
Governor of Florida
The Capitol
Tallahassee, Florida 32399-0001

Dear Governor Bush:

Thank you for your letter of April 28, 2006 concerning the importance of the Herbert Hoover Dike in providing flood protection during major weather events. I share your concern for the health and safety of the residents surrounding Lake Okeechobee during the upcoming hurricane season. The U.S. Army Corps of Engineers holds public safety as its highest priority. We will continue to take actions that put protection of the public above all other considerations. Lake Okeechobee water levels are managed to minimize risks for each hurricane season. The Herbert Hoover Dike safety enhancement activities provide for a wide array of preventive and protective measures, including increased on-site inspections as the prospect of damaging storms increases.

As you know, the Herbert Hoover Dike is an earthen dam that was built with natural materials in the 1930s, according to the construction standards of the time. The dike does permit some natural seepage from Lake Okeechobee; however, in some instances, this seepage creates internal erosion of the dike, creating small, subterranean tunnels that, if undetected and unchecked, may undermine the integrity of the dike. The Corps regularly monitors for this condition and takes immediate corrective actions to prevent erosion from leading to a failure of the dike. A rehabilitation project was approved in 2000, and construction on a 4.6-mile section of the dike near Port Mayaca is currently under way. This is the first of eight sections scheduled for rehabilitation.

Further, because the Corps recognizes that the dike is more stable when the water in Lake Okeechobee is maintained between 12 and 18.5 feet, we are currently studying the possibility of revising the approved lake regulation schedule to balance estuary health, a viable lake ecosystem, water supply, and public safety. The Corps lowered the water levels to a 14-foot elevation in mid-April, well ahead of our goal to reach that level by May 1st. Achieving lower lake levels during the dry season helps to prevent larger and potentially more environmentally damaging releases from the lake during the rainy season and as tropical storms and hurricanes become a threat.

The Corps has been engaged in discussions with the South Florida Water Management District and its independent consultants regarding the Report of Expert Review Panel, Technical Evaluation of Herbert Hoover Dike. The report confirms and validates concerns that the Corps has expressed for some time now, and which we

have already begun to address. The Corps is evaluating the consultant's report and will give every consideration to its recommendations.

I will address the nine specific concerns you identified in your letter:

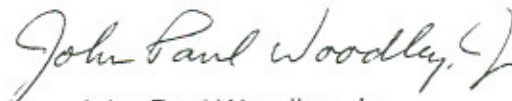
1. Lower lake level in hurricane season: Lake Okeechobee has been lowered to an acceptable lake elevation for the beginning of the 2006 hurricane season. The Corps will continue to use its current authority to maintain the lake elevation at safe levels throughout the 2007 hurricane season. Further, we are in the process of studying the possibility of revising the approved lake regulation schedule to allow the lake to be managed at a lower average level year-round.
2. Removal of power poles: The Corps has and continues to coordinate with Florida Power and Light and with the South Florida Water Management District to remove and relocate power poles constructed on the dike and within the Herbert Hoover Dike right of way. We share your goal to have all power poles relocated off Herbert Hoover Dike project limits.
3. Daily inspections: The Corps has a rigorous inspection program, the frequency of which (from once every ninety days to daily) corresponds to lake pool elevations. Potentially vulnerable areas are identified through these inspections and additional monitoring takes place, even at lower lake elevations, as necessary.
4. Materials, equipment and personnel for emergency repairs: Just as the Corps prepared for Hurricane Wilma and previous storms, it will continue to provide all necessary materials, equipment and personnel to ensure that any identified vulnerabilities in Herbert Hoover Dike are quickly and efficiently repaired. Supplies are stocked at various locations around the Herbert Hoover Dike, and equipment is prepositioned prior to predicted storms to allow immediate access and ready availability in the event a repair is necessary. The Corps is presently positioning an additional 53,000 tons of rock and stone to augment its existing supplies.
5. Acceleration of repairs and rehabilitation: We are pleased to report that the erosion containment repairs and debris removal that were required as a result of the 2005 hurricanes have been completed. The first phase of the planned Herbert Hoover Dike rehabilitation project is currently under way. The President's budget for fiscal year 2007 includes \$39.884 million, which the Corps identified as its spending capability for the Dike, to continue this rehabilitation work.
6. Repair design: Repair designs will be reevaluated to ensure optimal protection is provided under congressionally-authorized levels of protection and project requirements.
7. Engineering solutions to strengthen the dike: All engineering solutions are, and will continue to be, developed to optimize dike strengthening allowed under current congressional authorizations.

8. Congressional authorization: I will review the need for new authorization and consult with other members of the Administration to develop new recommendations for authorizations as needed.
9. Data and tools to Florida Department of Emergency Management: Through our proactive dam safety program, the Corps consistently coordinates with state agencies responsible for emergency management preparedness and response. This includes, but is not limited to, regularly scheduled coordination meetings, training and providing data and information to assist in the development and/or updating of emergency evacuation plans and overall preparedness. Finally, inundation maps have been provided to the county emergency management offices, with copies to the Florida State Dam Safety Officer and South Florida Water Management District.

The Corps welcomes independent analysis and constructive feedback, and we take the panel's recommendations and the Governor's requests very seriously. We will review and consider all of these recommendations very carefully, while the Corps continues to implement all of the measures currently under way as part of Herbert Hoover Dike safety enhancement activities. The Corps has identified dam safety, seepage, and stability correction projects as its number one funding priority and will do everything possible to prevent a breach in the Herbert Hoover Dike.

We will continue to work with all parties to protect life, property and the environment in south Florida as we contribute as partners to the management of the state's vital water resources. Please do not hesitate to contact me if I can be of further assistance.

Very truly yours,

A handwritten signature in cursive script that reads "John Paul Woodley, Jr." followed by a stylized flourish.

John Paul Woodley, Jr.
Assistant Secretary of the Army
Civil Works